

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

JOHN DOES 1 THROUGH 7,

Judgment Creditors,

v.

THE TALIBAN, AL-QAEDA,
and THE HAQQANI NETWORK,

Judgment Debtors,

v.

BANK OF AMERICA, N.A.,

Garnishee.

Case No.: 3:20-mc-00206-FDW-WCM

MOTION FOR LEAVE TO FILE SURREPLY

Doe Creditors, through undersigned counsel, move for leave of Court to file a surreply to the reply filed by VTB Bank Europe SE on May 9, 2023, DE 28, pursuant to Local Rule 7.1(e), and in support state:

1. On April 28, 2023, VTB Bank Europe SE filed a motion to intervene. DE 21. Doe Creditors responded to that motion on May 2, 2023. DE 26. VTB Bank Europe SE filed a reply to the response on May 9, 2023. DE 28.

2. In VTB Bank Europe SE's reply, it clarifies an earlier characterization concerning ownership and control over it. It had asserted that it was "not a 'Russian bank.'" DE 21-1:5. In reply, it asserts that that in fact there is no independent liquidator; that there has been no transfer of its interests in any property, including the blocked property; and that it is still a Russian-owned bank. *See* DE 28:6-

9. This appears to be a different characterization than its initial assertion that it was not a Russian bank. Doe Creditors have not had an opportunity to respond to the clarification, and so seek leave to do so.

3. Additionally, for the first time in its reply, VTB Bank Europe SE asserts that notice upon it was ineffective because it was entitled to service in accordance with the Hague Convention. DE 28:9-10. Doe Creditors dispute that argument and can only be heard if the Court grant's leave to file a surreply.

4. “Under Local Rule 7.1, ‘leave of Court may be sought to file a surreply when warranted’. LCvR 7.1(e). In general, courts permit a party to file a surreply when fairness dictates based on new arguments or evidence.” *Jones v. Coca-Cola Consol.*, No. 3:20-cv-00654-FDW-DSC, 2021 U.S. Dist. LEXIS 194626, at *3-4 (W.D.N.C. Oct. 8, 2021). “Local Rule 7.1(e) prohibits surreplies absent leave of Court for good cause. However, the Local Rules are ‘are not intended to bind any judicial officer to any particular course of action or result. Each judicial officer retains the discretion to apply the Local Civil Rules in a manner consistent with the demands of the case.’ L.R. 1.1.” *CFTC v. Bryant*, No. 3:21-cv-00487-RJC-DCK, 2022 U.S. Dist. LEXIS 100161, at *5 (W.D.N.C. June 6, 2022).

5. Doe Creditors respectfully urge this Court to grant leave to file a surreply. Doe Creditors have prepared a brief, 4-page surreply, attached as Exhibit A.

6. Undersigned counsel has conferred with counsel for VTB Bank Europe SE, who oppose the relief requested.

Dated: May 11, 2023.

Respectfully submitted,

Winiker Law Firm, PLLC
352 N. Caswell Road
Charlotte, North Carolina 28204
Telephone: (704) 333-8440

Facsimile: (704) 831-5274

By: s/ S. Frederick Winiker, III
S. Frederick Winiker, III
North Carolina Bar No. 22390
swiniker@winikerlaw.com

do Campo & Thornton, P.A.

Chase Bank Building
150 S.E. 2nd Avenue, Ste. 602
Miami, Florida 33131
Telephone: (305) 358-6600
Facsimile: (305) 358-6601

By: s/ John Thornton
John Thornton
Florida Bar No. 004820
jt@dandtlaw.com
Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 11, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ John Thornton
John Thornton